

**The Internal Revenue Service Should
Continue Taking Action to Improve
Compliance With the Freedom of Information
Act and Related Procedures**

July 2001

Reference Number: 2001-10-112

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

July 25, 2001

MEMORANDUM FOR CHIEF COMMUNICATIONS AND LIAISON

A handwritten signature in black ink, reading "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - The Internal Revenue Service Should
Continue Taking Action to Improve Compliance With the
Freedom of Information Act and Related Procedures

This report presents the results of our Fiscal Year (FY) 2001 review of denials of written requests to disclose information to taxpayers. In summary, we found that the Internal Revenue Service (IRS) should continue taking action to ensure that Freedom of Information Act (FOIA),¹ Privacy Act (PA) of 1974,² and Internal Revenue Code (I.R.C.) § 6103 (2000) requesters are provided with all the information to which they are entitled. The percentage of FOIA, PA, and I.R.C. § 6103 cases where information was improperly withheld increased slightly since our FY 2000 review,³ while the percentage and length of untimely FOIA and PA determinations decreased significantly.

The IRS improperly withheld information from requesters in 10.7 percent of the denied, partially denied, and no responsive record FOIA and PA requests and 7.0 percent of the I.R.C. § 6103 requests where information was denied or requesters were told that records could not be located. Last year, we reported that the IRS improperly withheld

¹ 5 U.S.C. § 552 (1994 & Supp. IV 1998).

² 5 U.S.C. § 552a (1994 & Supp. IV 1998).

³ *Responses to Taxpayers' Requests for Information Did Not Always Comply With the Freedom of Information Act or Internal Revenue Service Procedures* (Reference Number 2000-10-147, dated September 2000).

information in 8.8 percent of the FOIA and PA requests and 6.3 percent of the I.R.C. § 6103 requests. In addition, responses to FOIA and PA requesters were not timely in 20.1 percent of the cases in our sample, as compared with 33.8 percent last year.

In response to the recommendations made in our prior reports, IRS management is taking corrective actions to improve compliance with the FOIA and related procedures. These recommendations are still valid for the issues contained in this report.

IRS management agreed with the observations presented in a draft of this report. The full text of their comments is included as an appendix.

Copies of this report are also being sent to the IRS managers who are affected by the report. Please contact me at (202) 622-6510 if you have any questions or Maurice S. Moody, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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Executive Summary

Section 1102 (d)(3)(A) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998¹ requires the Treasury Inspector General for Tax Administration (TIGTA) to conduct periodic audits of a statistically valid sample of the total number of determinations made by the IRS to deny written requests to disclose information to taxpayers on the basis of Internal Revenue Code (I.R.C.) § 6103 (2000) or the Freedom of Information Act (FOIA)² exemption (b)(7).

The IRS FOIA Annual Report for Fiscal Year (FY) 2000 showed that of the 25,486 FOIA and Privacy Act (PA) of 1974³ cases processed, the IRS denied or partially denied 4,098 requests (16.1 percent) and replied that responsive records did not exist for 3,893 requests (15.3 percent). The remaining cases were either granted in full, referred to the agency where the records originated, withdrawn by the requester, or not provided because the request did not meet the criteria in 26 C.F.R. § 601.702 (1998) or for other miscellaneous reasons.

The overall objective of this review was to determine if the IRS improperly withheld information requested by taxpayers in writing, based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or by replying that responsive records did not exist. To accomplish this objective, we determined if:

- The IRS properly adhered to statutory requirements contained in the FOIA and the PA as well as internal procedural requirements.
- Disclosure offices adhered to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103⁴ (as opposed to the FOIA or the PA).

Results

The IRS should continue taking action to ensure that FOIA, PA, and I.R.C. § 6103 requesters are provided with all the information they are entitled to when responding to their written requests. The percentage of FOIA, PA, and I.R.C. § 6103 cases where

¹ Pub. L. No. 105-206, 112 Stat. 703 § 1102 (d)(3)(A).

² 5 U.S.C. § 552 (1994 & Supp. IV 1998).

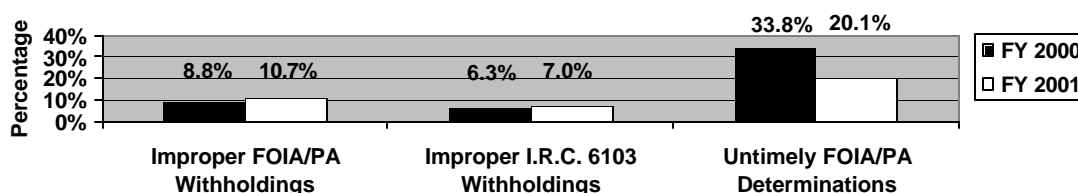
³ 5 U.S.C. § 552a (1994 & Supp. IV 1998).

⁴ The scope of this test included only I.R.C. § 6103 (c) and (e) requests.

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information was improperly withheld increased slightly since our FY 2000 review,⁵ while the percentage and length of untimely FOIA and PA determinations decreased significantly. The types of information improperly withheld, as well as the causes of the improper withholdings, were similar to those identified in our FY 2000 review. Chart 1 shows the results of our FY 2000 review compared to this review.

Chart 1 - Comparison of FY 2000 to FY 2001 Audit Results



Based upon the statistically valid samples, disclosure offices:

- Improperly withheld information from requesters in 10.7 percent of the denied, partially denied, and no responsive record FOIA and PA requests and 7.0 percent of the I.R.C. § 6103 requests where information was denied or requesters were told that records could not be located.
- Did not respond timely to FOIA and PA requesters in 20.1 percent of the cases in our sample where information was denied or responsive records were not available.

Based upon our FY 1999⁶ and FY 2000 reviews in this area, the IRS is taking action to improve compliance with the FOIA and related procedures, which should better ensure that requesters are provided with all the information to which they are entitled. For example, in August 2000, the IRS issued more comprehensive guidelines for employees involved in searching for information and preparing responses associated with FOIA requests. In addition, Disclosure management implemented a new computer system during FY 2000, the Electronic Disclosure Information Management System, to better control cases. The TIGTA did not review the effectiveness of these actions because the scope of this review included only cases closed prior to the date the IRS planned to complete corrective actions made in response to our prior reports.

Taxpayers' rights were potentially violated in cases where the IRS improperly withheld information requesters were entitled to receive under the FOIA and when requests were not responded to within the time periods required by law. As a result, the IRS is at risk of

⁵ *Responses to Taxpayers' Requests for Information Did Not Always Comply With the Freedom of Information Act or Internal Revenue Service Procedures* (Reference Number 2000-10-147, dated September 2000).

⁶ *The Internal Revenue Service Needs to Improve Its Compliance with Procedures When Processing Requests for Information Under the Freedom of Information Act* (Reference Number 2000-10-058, dated March 2000).

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incurring unnecessary costs associated with administrative appeals and civil litigation. We could not determine the amount of costs associated with FOIA appeals and litigation related to denials or partial denials based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available. However, IRS records showed that costs associated with all FOIA litigation-related activities were estimated around \$700,000. This represents 8.0 percent of the total costs associated with responding to all FOIA requests during FY 2000.

Additional Information Can Be Provided in Response to Taxpayers' Written Requests for Information

At times, the IRS improperly withheld information that requesters were entitled to receive in response to their written inquiries under the FOIA, the PA, and I.R.C. § 6103. Table 1 shows the results of our review of two statistically valid samples. These samples were based on a 90 percent confidence level and included cases closed during the period October 1, 1999, through July 31, 2000.

Table 1 – Sample Results for Denied Requests⁷

Type of Request	Actual Error Rate	Population of Denied Requests (10/1/99 – 7/31/00)	Estimated Nationwide Error Rate	Projected Number of Improperly Withheld Requests
FOIA/PA	10.7%	5,725 ⁸	6.6% – 14.9%	376 – 854
I.R.C. § 6103	7.0%	10,539 ⁹	3.9% – 10.0%	410 – 1,055

(Note: In one of the FOIA/PA error cases, Disclosure management disagreed with our conclusion that an improper withholding occurred.)

Information requested by taxpayers in FOIA and PA requests processed under the FOIA was improperly withheld primarily because the IRS did not correctly apply the FOIA or I.R.C. § 6103 when denying requests for information or did not conduct a proper search for records. Information requested by taxpayers under I.R.C. § 6103 was improperly withheld because the IRS did not conduct an adequate search for the information or did not fully address the taxpayers' requests even though information was readily available. In addition, some case files did not contain an indication of supervisory review.

⁷ Subject to rounding.

⁸ Adjusted for cases that were miscoded, could not be located, or did not contain adequate documentation.

⁹ The population of denied I.R.C. § 6103 requests is not specifically tracked by disclosure offices. This represents an estimated amount based on a review of 500 closed I.R.C. § 6103 cases.

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Responses to Freedom of Information Act and Privacy Act Requests Are More Timely, But Further Improvement Is Possible

Although the IRS has significantly improved the timeliness of responses to FOIA and PA requests where information was denied or responsive records could not be located, responses were not always made within the time periods allowed by law. Responses should be provided within 20 days for FOIA requests and 30 days for PA requests (both time periods exclude Saturdays, Sundays, and legal public holidays) after the responsible disclosure office receives the request. In 30 of the 149 (20.1 percent) cases in the sample, responses were not sent to requesters timely, as compared with 33.8 percent in the FY 2000 review. In addition, only 4 of the 30 (13.3 percent) untimely responses were more than 90 workdays untimely, as compared with 24.3 percent (26 of 107) in the FY 2000 review. Table 2 shows the age of the untimely responses.

Table 2 - Aging Schedule for Untimely Responses

Less Than or Equal to 30 Workdays Untimely	31 to 60 Workdays Untimely	61 to 90 Workdays Untimely	More Than 90 Workdays Untimely	Total Untimely Cases
17	6	3	4	30

The factors contributing to the delays in responding to requests were similar to those cited in our FY 2000 report. Review of the 30 untimely cases showed that 1) disclosure personnel were waiting for the requested documents from other IRS offices, 2) case files did not always contain an indication of supervisory review, 3) disclosure personnel needed additional time to copy and review voluminous documents, and 4) higher priority requests were processed first. In addition, case histories for half of the untimely responses did not contain any indication of why the response was late.

Conclusion

In response to the recommendations made in our prior reports, IRS management is taking corrective actions to improve compliance with the FOIA and related procedures. These recommendations are still valid for the issues contained in this report. Until the corrective actions are properly implemented, the IRS may not provide FOIA, PA, and I.R.C. § 6103 requesters with all the information they are legally entitled to within the time periods required by law.

Management's Response: IRS management agreed with the observations in our draft report and is implementing corrective actions to recommendations made in our FY 1999 and FY 2000 reports. The full text of their comments is included in Appendix V.

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Objective and Scope

The audit was performed to determine if the IRS improperly withheld information requested in writing by taxpayers.

The overall objective of this review was to determine if the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing, based on Freedom of Information Act (FOIA)¹ exemption (b)(3), in conjunction with Internal Revenue Code (I.R.C.) § 6103 (2000), and/or FOIA exemption (b)(7) or by replying that responsive records did not exist. To accomplish this objective, we determined if:

- The IRS properly adhered to statutory requirements contained in the FOIA and the Privacy Act (PA) of 1974² as well as internal procedural requirements.
- Disclosure offices adhered to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103³ (as opposed to the FOIA or the PA).

The sampled cases were closed from October 1, 1999, through July 31, 2000.

As shown in Table 3, two separate statistically valid random samples were selected consisting of 1) FOIA and PA requests that were fully or partially denied based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records did not exist and 2) closed I.R.C. § 6103 requests where information was denied or requesters were told that information was not available. These samples were based on a 90 percent confidence level and included cases closed during the period October 1, 1999, through July 31, 2000.

¹ 5 U.S.C. § 552 (1994 & Supp. IV 1998).

² 5 U.S.C. § 552a (1994 & Supp. IV 1998).

³ The scope of this test included only I.R.C. § 6103 (c) and (e) requests.

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Table 3 - Statistically Valid Random Samples

Type of Request	Size of Universe	Size of Sample
Closed FOIA/PA ⁴	5,725	149
Closed I.R.C. § 6103	10,539 ⁵	187 ⁶

The IRS does not account for I.R.C. § 6103 (c) and (e) requests received by IRS offices outside the GLD.

The Treasury Inspector General for Tax Administration (TIGTA) did not assess the effectiveness of internal controls over taxpayers' written requests for information, nor could we evaluate responses to taxpayers' I.R.C. § 6103 requests received by offices other than the Office of Governmental Liaison and Disclosure (GLD) because these requests are not required to be centrally tracked. As a result, the universe of I.R.C. § 6103 (c) and (e) requests closed by other IRS offices could not be determined or statistically sampled.

Except for the limitation described in the previous paragraph, this audit was performed in accordance with *Government Auditing Standards*. It was conducted from November 2000 through March 2001. The audit was performed by interviewing disclosure officials at the IRS GLD and the Illinois, Kansas City, Kentucky-Tennessee, and Midwest disclosure offices

⁴ The universe was adjusted to account for the percentage of cases that were miscoded, could not be located, or did not contain adequate documentation. There were 162 cases initially selected for review. However, 11 cases were miscoded and did not fall under the scope of the review, and 2 cases were not reviewed because the files could not be located or did not contain adequate documentation. Therefore, the final sample size was 149 cases.

⁵ The population of denied I.R.C. § 6103 requests is not specifically tracked by disclosure offices. This represents an estimated amount based on a review of 500 closed I.R.C. § 6103 cases.

⁶ The sample includes those cases from a review of 500 cases where the requester was denied information or told that records were not available.

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and by reviewing samples of closed FOIA, PA, and I.R.C. § 6103 cases.

Details of our audit objective, scope, and methodology are presented in Appendix I. Major contributors to this report are listed in Appendix II.

Background

The TIGTA is required by the RRA 98 to audit IRS determinations to deny taxpayers' written requests for information under I.R.C. § 6103 or FOIA exemption (b)(7).

Section 1102 (d)(3)(A) of the IRS Restructuring and Reform Act of 1998 (RRA 98)⁷ requires the TIGTA to conduct periodic audits of a statistically valid sample of the total number of determinations made by the IRS to deny written requests to disclose information to taxpayers on the basis of I.R.C. § 6103 or FOIA exemption (b)(7).

The IRS FOIA Annual Report for Fiscal Year (FY) 2000 showed that of the 25,486 FOIA and PA cases processed, the IRS denied or partially denied 4,098 requests (16.1 percent) and replied that responsive records did not exist for 3,893 requests (15.3 percent). The remaining cases were either granted in full, referred to the agency where the records originated, withdrawn by the requester, or not provided because the request did not meet the criteria in 26 C.F.R. § 601.702 (1998) or for some other miscellaneous reason.

Within the IRS, the GLD is responsible for the disclosure program. This office ensures that the IRS complies with the FOIA, PA, and I.R.C. § 6103 requirements; provides national oversight and guidance on procedural and policy matters to field offices; and provides related training.

Disclosure offices process almost all FOIA and PA requests for information. Written requests for information under I.R.C. § 6103 may be processed by either the disclosure offices or the IRS office that has custody of the requested records.

⁷ Pub. L. No. 105-206, 112 Stat. 703 § 1102 (d)(3)(A).

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FOIA and PA requests received by disclosure offices are controlled on the Electronic Disclosure Information Management System (E-DIMS). A small number of FOIA requests received by the Director of Practice are controlled on a manual system. I.R.C. § 6103 requests received by disclosure offices are controlled on E-DIMS with the exception of those cases worked by the Tax Checks Branch, which are still controlled on the Disclosure Information Management System (DIMS). All of the FOIA, PA, and I.R.C. § 6103 cases from the E-DIMS, the DIMS, and the manual system maintained by the Director of Practice were included in the population of cases and had an equal chance of being selected in our statistically valid samples. I.R.C. § 6103 requests received by other IRS offices are not controlled on the E-DIMS or the DIMS.

When a FOIA or PA case is closed, the controlling disclosure office enters the appropriate code on the E-DIMS showing how the case was closed. Taxpayer requests usually fall under seven categories: granted, partially denied, denied, no responsive records (responsive records could not be located), transferred (to another IRS disclosure office with jurisdiction over the records), withdrawn, or imperfect (the IRS informs the requester that the request did not meet the criteria set forth in 26 C.F.R. § 601.702 (1998)). If the request is denied or partially denied, the specific exemptions used to justify withholding the information are recorded on the E-DIMS.

Our limited review of selected information on the E-DIMS in a prior audit⁸ provided reasonable assurance that it was accurate and complete for the information needed to identify the population of cases for our statutory review.

⁸ *The Treasury Inspector General for Tax Administration Can Rely Upon Data on the Electronic Disclosure Information Management System for Its Statutory Review* (Reference Number 2001-10-051, dated March 2001).

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Results

The IRS should continue taking action to ensure that FOIA, PA, and I.R.C. § 6103 requesters are provided with all the information they are entitled to when responding to their written requests. The percentage of FOIA, PA, and I.R.C. § 6103 cases where information was improperly withheld increased slightly since our FY 2000 review,⁹ while the percentage and length of untimely FOIA and PA determinations decreased significantly. The types of information improperly withheld, as well as the causes of the improper withholdings, were similar to those identified in the FY 2000 review.

Based upon the statistically valid samples, disclosure offices:

- Improperly withheld information from requesters in 10.7 percent of the denied, partially denied, and no responsive record FOIA and PA requests and 7.0 percent of the I.R.C. § 6103 requests where information was denied or requesters were told that records could not be located, as compared with 8.8 percent and 6.3 percent last year.
- Did not respond timely to FOIA and PA requesters in 20.1 percent of the sampled cases where information was denied or responsive records were not available, as compared with 33.8 percent last year.

Based upon the FY 1999¹⁰ and FY 2000 reviews in this area, the IRS is taking action to improve compliance

⁹ *Responses to Taxpayers' Requests for Information Did Not Always Comply With the Freedom of Information Act or Internal Revenue Service Procedures* (Reference Number 2000-10-147, dated September 2000).

¹⁰ *The Internal Revenue Service Needs to Improve Its Compliance with Procedures When Processing Requests for Information Under the Freedom of Information Act* (Reference Number 2000-10-058, dated March 2000).

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with the FOIA and related procedures, which should better ensure that requesters are provided with all the information they are entitled to. For example, in August 2000, the IRS issued more comprehensive guidelines for employees involved in searching for information and preparing responses associated with FOIA requests. In addition, Disclosure management implemented a new computer system during FY 2000, the E-DIMS, to better control cases. The TIGTA did not review the effectiveness of these actions because the scope of this review included only cases closed prior to the date the IRS planned to complete corrective actions made in response to our prior reports.

Taxpayers' rights were potentially violated in cases where the IRS improperly withheld information requesters were entitled to receive under the FOIA and when requests were not responded to within the time periods required by law. As a result, the IRS is at risk of incurring unnecessary costs associated with administrative appeals and civil litigation. The TIGTA could not determine the amount of costs associated with FOIA appeals and litigation related to denials or partial denials based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available. However, IRS records showed that costs associated with all FOIA litigation-related activities were estimated around \$700,000. This represents 8.0 percent of the total costs associated with responding to all FOIA requests during FY 2000.

Additional Information Can Be Provided in Response to Taxpayers' Written Requests for Information

The IRS did not always provide FOIA, PA, and I.R.C. § 6103 requesters with all the information to which they were legally entitled.

At times, the IRS improperly withheld information that requesters were entitled to receive in response to their written inquiries under the FOIA, the PA, and I.R.C. § 6103. As a result, taxpayers' rights were potentially violated and the IRS is at risk of incurring

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unnecessary costs associated with administrative appeals and civil litigation initiated by requesters who were improperly denied information under the FOIA.

Table 4 shows the results of the two statistically valid samples.

Table 4 - Number of Improper Withholdings in Samples

Type of Request	Size of Sample	Number of Improper Withholdings	Percentage of Improper Withholdings (Error Rate)
FOIA/PA	149	16	10.7%
I.R.C. § 6103	187	13	7.0%

(Note: In one of the FOIA/PA error cases in the chart, disclosure management disagreed with our conclusion that an improper withholding occurred. The withheld information was a newspaper article obtained through research over the Internet that was part of an examination file relevant to the request; it was printed on the same page as another newspaper article that was released to the requester. Disclosure management acknowledged that there was no FOIA exemption that would have allowed them to withhold the document but stated that it is IRS policy not to disclose information that is detrimental to an individual or business if it is not relevant to the FOIA request.)

Information requested by taxpayers under the FOIA and the PA

The IRS improperly withheld information from requesters in 376 to 854 FOIA and PA cases.

We project, with 90 percent confidence, that the IRS improperly withheld information from requesters in 376 to 854 (6.6 percent to 14.9 percent) FOIA and PA cases where information was denied or partially denied based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.

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Information requested by taxpayers in FOIA and PA requests processed under the FOIA was improperly withheld primarily because the IRS did not correctly apply the FOIA or I.R.C. § 6103 when denying requests for information or did not conduct a proper search for records.

The FOIA requires that records of the Federal Government generally be available to the public upon request, unless specifically exempted. FOIA exemption (b)(3) regulates the release of records specifically exempt from disclosure by statute (e.g., I.R.C. § 6103). I.R.C. § 6103 controls the release of tax returns and return information and provides a mechanism for taxpayers to request tax returns and return information or request that it be disclosed to a designee. FOIA exemption (b)(7) regulates the release of records or information compiled for law enforcement purposes.

The PA contains a provision that prevents Federal Government agencies from relying on any exemption in the PA to withhold from an individual any record that is otherwise available to that individual under the FOIA.

The IRS improperly withheld information in 16 of the 149 (10.7 percent) FOIA and PA cases in our random sample. Information requested by taxpayers in FOIA and PA requests processed under the FOIA was improperly withheld primarily because the IRS did not correctly apply the FOIA or I.R.C. § 6103 when denying requests for information or did not conduct a proper search for records. In some of the 16 cases, there was more than 1 reason for the improper withholding of information. Specifically:

- In 13 instances, information was improperly withheld because the IRS did not correctly apply the FOIA statute and/or I.R.C. § 6103. For example, in one case, the IRS improperly withheld return information based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103. Review of the withheld documents showed that the taxpayer's representative was authorized to receive the redacted return information and the information was within the scope of the request.
- In five instances, the IRS did not conduct a proper search for records. For example, a taxpayer requested copies of information from a specific IRS

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computer database for tax years 1986 through 1999. The IRS replied that there were no records responsive to the taxpayer's request. However, review of that database showed that records for 1996 through 1998 were available and should have been provided to the requester.

- In four instances, the IRS did not follow Internal Revenue Manual guidelines. For example, a taxpayer's representative requested copies of all documents relating to the audit of the taxpayer's return. The IRS redacted references to IRS office names and addresses associated with a letter from the IRS that was previously issued to the return preparer. Disclosure policy guidelines prohibit the redaction of office names from documents when sanitizing them.
- In one instance, the IRS response did not fully address the taxpayer's request. In this instance, the IRS did not provide two documents requested by a taxpayer, even though they were available and the IRS had obtained them. The taxpayer requested, in addition to other documents, copies of documents from a specific IRS computer database. The documents were included in the case file related to the taxpayer's request, but the IRS informed the taxpayer that the records could not be located.

In addition, case files did not include any indication of supervisory review in 3 of the 16 cases where information was improperly withheld.

Information requested by taxpayers under I.R.C. § 6103

The IRS improperly withheld information from requesters in 410 to 1,055 I.R.C. § 6103 requests.

We project, with 90 percent confidence, that the IRS improperly withheld information from requesters in 410 to 1,055 (3.9 percent to 10.0 percent) I.R.C. § 6103 cases where information was denied or partially denied or requesters were told that records could not be located.

I.R.C. § 6103 controls the release of tax returns and return information and provides a mechanism for

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taxpayers to request tax returns and return information or request for it to be disclosed to a designee.

The IRS improperly withheld information in 13 of the 187 (7.0 percent) I.R.C. § 6103 cases in our random sample. Information requested by taxpayers under I.R.C. § 6103 was improperly withheld because the IRS did not conduct an adequate search for the requested information or did not fully respond to the taxpayers' requests for information even though the information was readily available. For example:

- In one case, a state agency requested information regarding a taxpayer's filing history for multiple years with the taxpayer's consent under I.R.C. § 6103(c). The IRS responded that it did not find any return information for the years in question, even though the taxpayer filed a joint return for those years and the records were available under the spouse's Social Security Number.
- In another case, a probation office requested a taxpayer's adjusted gross income for the past 6 years with the taxpayer's consent under I.R.C. § 6103(c). The IRS provided the adjusted gross income for 4 of the 6 years; it stated that there was no record of filing for another year and that data for the remaining year was not available. Research showed that the information regarding the remaining year was readily available and should have been provided to the requester.

In addition, case files did not contain any evidence of supervisory review in 7 out of the 13 exception cases.

Responses to Freedom of Information Act and Privacy Act Requests Are More Timely, But Further Improvement Is Possible

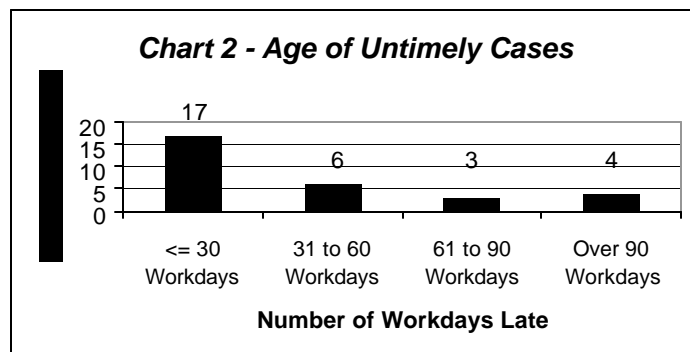
The IRS did not respond timely to between 842 and 1,462 FOIA and PA requests.

The IRS did not always respond to FOIA and PA requesters within the time periods allowed by law. We project, with 90 percent confidence, that between

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842 and 1,462 FOIA and PA requests denied under FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records did not exist were not processed timely during the period October 1, 1999, through July 31, 2000.

The IRS did not respond timely to 20.1 percent of the cases (30 of the 149) in the FOIA and PA random sample, as compared with 33.8 percent in the FY 2000 review. In addition, only 4 of the 30 (13.3 percent) untimely responses were more than 90 workdays late, as compared with 24.3 percent in the FY 2000 review. As shown in Chart 2, slightly more than half of the cases were less than or equal to 30 workdays late.



The FOIA requires Federal agencies to determine within 20 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt of a FOIA request by the disclosure office whether to comply with the request and to immediately notify the person making the request of the determination, the reasons for the determination, and the right to appeal the determination. Requesters should receive responses to their PA requests within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt of the request by the disclosure office. The agency may request one voluntary extension of these time periods, and if the requester agrees to the extension, the agency must notify the requester of its determination by the end of the extension period.

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The factors contributing to the delays in responding to requests were similar to those cited in the FY 2000 report. Analysis of the 30 cases where responses were not provided timely showed that the IRS:

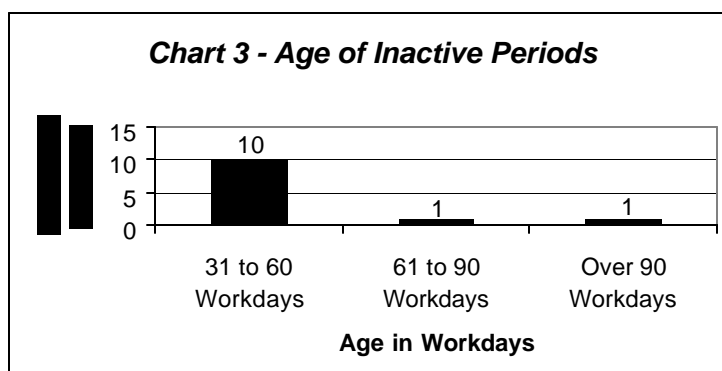
- Did not respond within the statutory time period and did not request an extension of time from the requester in six cases.
- Requested 1 extension from the requester but either did not request the extension timely or did not respond by the date provided for in the extension letter in 16 cases.
- Requested multiple extensions from the requester but either did not request the extension timely or did not respond within the first extension period in eight cases.

Several factors contributed to the delays in responding to requesters.

In 15 of the 30 untimely cases, there was no explanation for the delay in responding to the requester. However, several factors generally contributed to the delays in responding to the FOIA and PA requests where information was denied or requesters were told that responsive records could not be located. In 15 cases, there were delays in obtaining search results or documents from functional offices, disclosure personnel needed additional time to copy and review voluminous documents, or higher priority requests were processed first. Six case files did not include any indication of supervisory review. Ongoing supervisory review would better ensure that responses to FOIA and PA requests are timely.

In addition, 7 of the 30 untimely cases had long periods of inactivity. Analysis showed that these 7 cases had at least 1 30-workday period where no case activity took place. As shown in Chart 3, the number of workdays of each period of inactivity was generally from 31 to 60 workdays.

The Internal Revenue Service Should Continue Taking Action to Improve Compliance With the Freedom of Information Act and Related Procedures



As a result, requesters were not provided with responses to their requests within the time required by law. This increases the risk of requesters filing civil actions against the IRS.

Management's Response: IRS management agreed with the observations in our draft report and is implementing corrective actions to recommendations made in our FY 1999 and FY 2000 reports. In the first quarter of FY 2001, the GLD issued instructions that a senior technician or a manager must review all partial or full denial responses to FOIA and PA requests. The GLD is conducting a staffing study to improve timeliness of responses to FOIA and PA requests. Also, the GLD will undertake a "skills assessment" of employees to determine the need for additional Integrated Data Retrieval System training or research tools.

Conclusion

In response to the recommendations made in our prior reports, IRS management is taking corrective actions to improve compliance with the FOIA and related procedures. Until the corrective actions are properly implemented, the IRS may not provide FOIA, PA, and I.R.C. § 6103 requesters with all the information they are legally entitled to within the time periods required by law.

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine if the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing, based on Freedom of Information Act (FOIA)¹ exemption (b)(3), in conjunction with Internal Revenue Code (I.R.C.) § 6103 (2000), and/or FOIA exemption (b)(7) or by replying that responsive records were not available. The following tests were performed to accomplish this objective:

- I. Determined if the IRS properly adhered to statutory requirements contained in the FOIA and Privacy Act (PA) of 1974² as well as internal procedural requirements.
 - A. Identified 6,224 national FOIA and PA cases that were closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available during the period October 1, 1999, through July 31, 2000.
 1. Obtained an extract from the Electronic Disclosure Information Management System (E-DIMS), as well as a listing from the Director of Practice that included FOIA and PA cases that were closed during the period October 1, 1999, through July 31, 2000, and identified 6,241 FOIA and PA cases that were closed nationally as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.
 2. Performed limited tests to verify if the E-DIMS extract included the specified time period and information requirements and identified 118 cases with incomplete information.
 3. Reviewed the 118 cases with incomplete information to determine if they met the criteria for review and identified 17 cases that did not fall under the scope of our review. These 17 cases were subtracted from the 6,241 cases identified in the data extract to arrive at 6,224 cases.

¹ 5 U.S.C. § 552 (1994 & Supp. IV 1998).

² 5 U.S.C. § 552a (1994 & Supp. IV 1998).

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- B. Designed an attribute sample based on a 90 percent confidence level, expected error rate of 10 percent, and estimated precision of 4 percent. This sampling methodology was chosen so the Treasury Inspector General for Tax Administration could project the number of cases with improper withholdings to the universe of cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available. The sampling plan and methodology were reviewed by a professional statistician to ensure that they were valid.
- C. Randomly sampled 149³ of 6,224 FOIA and PA cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.
 - 1. Reviewed 86 of the 149 randomly selected FOIA and PA cases that were closed on the E-DIMS as partially or fully denied pursuant to FOIA exemption (b)(3), in conjunction with IRC § 6103, and/or FOIA exemption (b)(7) to determine if the decision to withhold information was appropriate and if the determination was made in a timely manner.
 - 2. Reviewed 63 of the 149 randomly selected FOIA and PA cases that were closed on the E-DIMS as no responsive records (i.e., the IRS replied that responsive records were not available) to determine if the record search was adequate and if the determination was made in a timely manner.
- D. Projected the number of improper withholdings to the 5,725⁴ FOIA and PA cases that were denied based on FOIA exemption (b)(3), in conjunction with IRC § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available. The projection was made using attribute sampling, with a 90 percent confidence level, and an actual error rate of 10.7 percent. As a result, the actual precision factor was 4.2 percent. A professional statistician reviewed the projection to ensure that it was valid.

³ There were 162 cases initially selected for review. However, 11 cases were miscoded and did not fall under the scope of the review, and 2 cases were not reviewed because the files could not be located or did not contain adequate documentation. Therefore, the final sample size was 149 cases.

⁴ See calculation on page 20.

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- E. Projected the number of untimely determinations to 5,725 FOIA and PA cases that were denied based on FOIA exemption (b)(3), in conjunction with IRC § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available. The projection was made using attribute sampling, with a 90 percent confidence level, and an actual error rate of 20.1 percent. As a result, the actual precision was 5.4 percent. A professional statistician reviewed the projection to ensure that it was valid.
- II. Determined if disclosure offices adhered to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103⁵ (as opposed to the FOIA or the PA).
 - A. Obtained extracts from the E-DIMS and the Disclosure Information Management System (DIMS) and identified 28,180 I.R.C. § 6103 (c) and (e) requests received from taxpayers or their designees that were closed nationally during the period October 1, 1999, through July 31, 2000. Limited tests were performed to determine if the E-DIMS and DIMS extracts included the specified time period and information requirements.
 - B. Designed an attribute sample based on a 90 percent confidence level, expected error rate of 10 percent, and estimated precision rate of 4 percent. This sampling methodology was chosen because it would allow us to project the number of cases with improper withholdings to the universe of closed I.R.C. § 6103 (c) and (e) requests where information was denied or requesters were told that records were not available. The sampling plan and methodology were reviewed by a professional statistician to ensure that they were valid.
 - C. Randomly sampled 500 of the 28,180 I.R.C. § 6103 (c) and (e) closed cases.
 - 1. Determined that 187 of the 500 (37.4 percent) randomly sampled cases included instances where information was denied or requesters were told that the records were not available.
 - 2. Based on an initial analysis of the 500 randomly sampled cases, we estimated that the population of 28,180 closed I.R.C. § 6103 (c) and (e) requests contained 10,539⁶ requests where information was denied or requesters were told that records were not available.

⁵ The scope of this test included only I.R.C. § 6103 (c) and (e) requests.

⁶ See calculation on page 21.

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- D. Reviewed the 187 cases where information was denied or requesters were told that records were not available to determine if the decision to withhold the information based on I.R.C. § 6103 was appropriate.
- E. Projected the number of improper withholdings to the 10,539 I.R.C. § 6103 (c) and (e) requests where we estimated that information was not provided to the taxpayer or their designee. The projection was made using attribute sampling, a 90 percent confidence level, and an actual error rate of 7.0 percent. As a result, the precision factor was 3.1 percent. A professional statistician reviewed the projection to ensure that it was valid.

Major Contributors to This Report

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**The Internal Revenue Service Should Continue Taking Action to Improve
Compliance With the Freedom of Information Act and Related Procedures**

Appendix III

Report Distribution List

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National Taxpayer Advocate TA

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to the Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 615 responses to Freedom of Information Act (FOIA)¹ or Privacy Act (PA) of 1974² requests where information was improperly withheld (see page 7).

Methodology Used to Measure the Reported Benefit:

This attribute sample was randomly selected from the universe of FOIA and PA requests that were closed nationally during the period October 1, 1999, through July 31, 2000, as 1) a full or partial denial with either FOIA exemption (b)(3), in conjunction with Internal Revenue Code (I.R.C.) § 6103 (2000), and/or FOIA exemption (b)(7) cited as one of the reasons for withholding information or 2) a no responsive record case.

We arrived at the estimate by:

- Multiplying the number of requests closed as denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the Internal Revenue Service (IRS) replied that responsive records were not available by the percentage of cases that were miscoded, could not be located, or did not contain adequate documentation in the sample.
$$6,224 * 13/162 = 499 \text{ cases}$$
- Subtracting the estimated number of miscoded cases in the universe from the number of requests closed as denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.
$$6,224 - 499 = 5,725 \text{ cases}$$
- Multiplying the estimated number of requests closed as denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7)

¹ 5 U.S.C. § 552 (1994 & Supp. IV 1998).

² 5 U.S.C. § 552a (1994 & Supp. IV 1998).

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or where the IRS replied that responsive records were not available (adjusted for the percentage of miscoded, missing, and inadequate documentation cases in the sample) by the error rate of cases reviewed. A case was considered an “error” if the IRS improperly withheld information that was available and could have been released under the FOIA.

$$5,725 * 10.7 \text{ percent}^3 = 615 \text{ cases}$$

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 733 responses to I.R.C. § 6103 requests where information was improperly withheld (see page 9).

Methodology Used to Measure the Reported Benefit:

This attribute sample was randomly selected from the universe of I.R.C. § 6103 (c) and (e) requests that were closed nationally by disclosure offices during the period October 1, 1999, through July 31, 2000. Disclosure offices are not required to input a disposition code showing how I.R.C. § 6103 cases are closed (granted, denied, etc.). Therefore, the majority of these cases did not include a disposition code.

We estimated the size of the universe by:

- Identifying 28,180 closed I.R.C. § 6103 (c) and (e) requests.
- Randomly selecting 500 of these cases to estimate the universe of denied, partially denied, and no available record cases closed during the period October 1, 1999, through July 31, 2000.
- Multiplying the total number of closed requests in the audit universe by the percentage of cases in the sample where information was denied or taxpayers were told that records were not available (187 of 500).

$$28,180 \text{ cases} * 37.4 \text{ percent} = 10,539 \text{ cases}$$

- Multiplying the estimated universe of cases where information was denied or taxpayers were told that records were not available by the error rate for the cases reviewed (7.0 percent). A case was considered an “error” if the IRS improperly withheld information from the requester.

$$10,539 \text{ cases} * 7.0 \text{ percent}^4 = 733 \text{ cases}$$

³ Subject to rounding.

⁴ Subject to rounding.

The Internal Revenue Service Should Continue Taking Action to Improve Compliance With the Freedom of Information Act and Related Procedures

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 1,153 FOIA and PA requests denied under FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records did not exist were not processed timely during the period October 1, 1999, through July 31, 2000 (see page 10).

Methodology Used to Measure the Reported Benefit:

This attribute sample was randomly selected from the universe of FOIA and PA requests that were closed nationally during the period October 1, 1999, through July 31, 2000, as 1) a full or partial denial with either FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) cited as one of the reasons for withholding information or 2) a no responsive record case.

We arrived at our estimate by:

- Multiplying the number of requests closed as denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available by the percentage of cases that were miscoded, could not be located, or did not contain adequate documentation in the sample.
$$6,224 * 13/162 = 499 \text{ cases}$$
- Subtracting the estimated number of miscoded cases in the universe from the number of requests closed as denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.
$$6,224 - 499 = 5,725 \text{ cases}$$
- Multiplying the estimated number of requests closed as denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available (adjusted for the percentage of miscoded, missing, and inadequate documentation cases in the sample) by the percentage of untimely responses. The following calculation was made to arrive at the estimate:
$$5,725 * 20.1 \text{ percent}^5 = 1,153 \text{ cases}$$

⁵ Subject to rounding.

The Internal Revenue Service Should Continue Taking Action to Improve Compliance With the Freedom of Information Act and Related Procedures

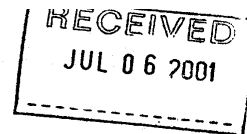
Appendix V

Management's Response to the Draft Report




CHIEF COMMUNICATIONS
AND LIAISON

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224



JUL - 6 2001

MEMORANDUM FOR TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

FROM: David R. Williams 
Chief Communications & Liaison

SUBJECT: Treasury Inspector General for Tax Administration
(TIGTA) Draft Report – The Internal Revenue Service
Should Continue Taking Action to Improve Compliance
With the Freedom of Information Act and Related
Procedures

Thank you for the opportunity to review and comment on the subject draft report. As noted in the report, we have worked to improve our compliance with the Freedom of Information Act and related procedures. We take our responsibilities in complying with the Act seriously and welcome suggestions that help us improve this process. I believe the corrective actions described below will significantly improve our responses to written requests for information under the Freedom of Information Act (FOIA), Privacy Act (PA), and Internal Revenue Code (IRC) section 6103.

IDENTITY OF RECOMMENDATION #1

The IRS should continue taking action to ensure that FOIA, PA, and IRC section 6103 requesters are provided with all the information they are entitled to when responding to their written requests. The percentage of FOIA, PA, and IRC section 6103 where information was improperly withheld increased slightly since our FY 2000 review, while the percentage and length of untimely FOIA and PA determinations decreased significantly.

ASSESSMENT OF CAUSE

We improperly withheld information requested by taxpayers in FOIA and PA requests processed under the FOIA because the IRS did not correctly apply the FOIA or IRC section 6103 when denying requests for information or did not conduct a proper search for records. We improperly withheld information requested by taxpayers under IRC section 6103 because the IRS did not conduct an adequate search for the information or did not fully address the taxpayers' requests even though information was readily available. In addition, some case files did not contain an indication of supervisory review.

The Internal Revenue Service Should Continue Taking Action to Improve Compliance With the Freedom of Information Act and Related Procedures

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During the first quarter of FY 2001, our Office of Governmental Liaison and Disclosure (GLD) issued instructions to the Field that a senior technician or a manager must review all partial or full denial responses to FOIA and PA requests. We will incorporate these instructions in the next revision of IRM 1.3. Due date is 10/1/2001.

GLD is conducting a staffing study to determine appropriate staffing and grade levels to ensure continued improvement on timeliness of responses to FOIA and PA requests. Due date is 10/1/2001.

As part of our FY 2001 training plan, GLD will undertake a "skills assessment" of employees to determine the need for additional IDRS training or research tools. Due date is 10/1/2001.

The due dates for these corrective actions coincide with the corrective action due dates for TIGTA Audits 2000-10-058 and 2000-10-147 which address the same issues and are also assigned to GLD.

If you need additional information, please contact me at (202) 622-5440 or Tom Marusin at (202) 622-6200.